

AMENDED IN SENATE APRIL 3, 1997

SENATE BILL

No. 615

Introduced by Senator Burton

February 25, 1997

An act to add Section 22824 to, and to add Chapter 10.2 (commencing with Section 3511) to Division 4 of Title 1 of, the Government Code, relating to state employees.

LEGISLATIVE COUNSEL'S DIGEST

SB 615, as amended, Burton. State employees.

(1) Existing law provides that if any provision of a memorandum of understanding reached between the state employer and a recognized employee organization representing state civil service employees requires the expenditure of funds, those provisions of the memorandum of understanding shall not become effective unless approved by the Legislature in the annual Budget Act.

This bill would approve provisions that require the expenditure of funds of an unspecified memorandum of understanding entered into between the state employer and a specified employee organization, and would provide that the provisions of any memorandum of understanding that require the expenditure of funds shall become effective even if the provisions of the memorandum of understanding are approved by the Legislature in legislation other than the annual Budget Act.

(2) The Bill of Rights for State Excluded Employees provides that supervisory employees have the right to form, join, and participate in the activities of supervisory employee

organizations of their own choosing for the purpose of representation on all matters relating to employment conditions and supervisory employer-employee relations, including wages, hours, and other terms and conditions of employment.

This bill would specify certain benefits to which supervisors of employees in State Bargaining Unit 6 are entitled and their rights, including, but not limited to, their rights in the areas of salary adjustments, discipline, filling of vacancies, transfers, promotions and promotional examinations, and grievances.

(3) The Public Employees' Medical and Hospital Care Act authorizes the ~~state Board of Administration of the Public Employees' Retirement System to offer its~~ *provide state and local employees a and their annuitants and family members health benefits plan coverage.*

This bill would provide that any memorandum of understanding reached between the Governor and the exclusive bargaining agent for State Bargaining Unit 6 that has been approved by the Legislature may provide for one health benefits plan *administered by a trust fund sponsored by the exclusive bargaining agent* with specified coverage in which all classes contained in State Bargaining Unit 6 and all supervisors in correctional peace officer classes *and family members and annuitants* shall participate. This bill would require the memorandum of understanding to include a method of informing employees of their rights and options under the occupational injury and illness portion of the health benefits plan, to require that a joint labor management safety committee be established, and to describe a process available to employees to resolve issues subject to the jurisdiction of the Worker's Compensation Appeals Board voluntarily.

(4) *The Public Employees' Retirement Law requires the Board of Administration to determine whether state employees are incapacitated for duty and eligible to retire for disability.*

This bill would require the memorandum of understanding to include a dispute resolution process that would provide that the determination by a specified medical evaluator or arbitrator that a participant is a qualified injured worker shall



be binding upon the board on the issue of incapacity for the performance of duty.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares that
2 the purpose of Section 2 is to adopt an agreement
3 pursuant to Section 3517 of the Government Code
4 entered into by the state employer and recognized
5 employee organizations to make any necessary statutory
6 changes in health, retirement, salary, or other benefits.

7 SEC. 2. The provisions of the following memorandum
8 of understanding, prepared pursuant to Section 3517.5 of
9 the Government Code, and entered into by the state
10 employer and State Bargaining Unit 6, California
11 Correctional Peace Officers Association, dated ____,
12 and that requires the expenditure of funds, are hereby
13 approved for the purposes of Section 3517.6 of the
14 Government Code.

15 SEC. 3. Notwithstanding Section 3517.6 of the
16 Government Code, the provisions of any memorandum
17 of understanding that require the expenditure of funds
18 shall become effective even if the provisions of the
19 memorandum of understanding are approved by the
20 Legislature in legislation other than the annual Budget
21 Act.

22 SEC. 4. Chapter 10.2 (commencing with Section
23 3511) is added to Division 4 of Title 1 of the Government
24 Code, to read:

25
26 CHAPTER 10.2. CORRECTIONAL PEACE OFFICER
27 SUPERVISORS
28

29 3511. The Legislature finds and declares that
30 supervisors who are defined in this code as an “excluded”
31 class of employees have the right to belong to an
32 employee organization of their choice but are at a distinct
33 disadvantage in attempting to improve their health or

1 welfare benefits. These employees, while not
2 management, also are not employees under the law
3 permitting collective bargaining.

4 Furthermore, to affect improvements to this problem,
5 the Legislature passed Assembly Bill 277 in the 1995–96
6 Regular Session of the Legislature that would have
7 permitted collective bargaining for supervisors of public
8 safety employees, generally peace officers, and
9 firefighters. However, the Governor vetoed that measure
10 thereby indicating opposition to such a process for these
11 employees.

12 Furthermore, the Governor has not proposed Budget
13 Act appropriations to cover any increases for salaries or
14 to maintain benefits for supervisory employees.
15 Therefore, the Legislature finds that the only legitimate
16 recourse for these employees is to pursue their issues
17 within the legislative process.

18 3511.1. This chapter shall apply to supervisors of
19 employees in State Bargaining Unit 6 who are defined as
20 peace officers pursuant to Section 830.5 of the Penal Code
21 and who are employed by the Department of
22 Corrections, the California Youth Authority, the Youthful
23 Offender Parole Board, or the Board of Prison Terms. For
24 the purposes of this chapter, “supervisors” means persons
25 in the supervisory classifications described in this section.

26 3511.2. (a) Supervisors shall receive a one-time 5
27 percent salary increase at the conclusion of 20 years of
28 service as an employee of the Department of Corrections,
29 the California Youth Authority, the Youthful Offender
30 Parole Board, or the Board of Prison Terms.

31 (b) Supervisors shall maintain a 15 percent pay
32 differential between their classification and the rank and
33 file classification that they supervise within their
34 respective career ladders, as a promotional incentive.
35 This pay differential shall be maintained for each
36 promotional level within the supervisory career ladder.

37 3511.3. Supervisors shall be provided fully paid family
38 medical, dental, vision, and hearing benefits.

39 3511.4. Supervisors shall be subject to just cause
40 discipline. Adjudication of adverse actions against any

1 supervisor shall be completed within six months of
2 discovery of the events leading to the action.

3 3511.5. Supervisors shall be provided watch
4 preference based on time in grade. Furthermore,
5 supervisors shall be permitted a bid process for regular
6 days off also based on time in grade.

7 3511.6. The state shall fill promotional vacancies for
8 supervisors by lateral, in grade appointments when a
9 lateral transfer request exists at the appointing
10 institution.

11 3511.7. (a) Supervisors desiring to transfer shall
12 apply in writing in a manner prescribed by the state to the
13 appointing authority of the location to which the
14 supervisor desires to transfer. Requests to transfer shall be
15 to permanent positions in the same department or
16 agency within the supervisor's same classification. A
17 supervisor's written request shall be placed in order by
18 seniority of the supervisor requesting the transfer with
19 those of others who have similarly filed a request to the
20 same position at that location. The appointing power or
21 designee shall provide the supervisor submitting a
22 request for transfer with an acknowledgment of receipt
23 of the transfer request. Supervisor requests shall be kept
24 on file at the location to which the supervisor desires to
25 transfer through June 30 of each fiscal year or removed
26 earlier at the request of the supervisor.

27 (b) At the request of the appropriate California
28 Correctional Peace Officers Association supervisory
29 representative, access to the supervisory transfer files
30 shall be furnished to the representative.

31 (c) When lateral transfer is the means used to fill a
32 vacant position, the most senior supervisor with a request
33 to transfer on file at that institution shall be interviewed.
34 The policy of the department is to approve a request for
35 transfer where the supervisor performance has been
36 satisfactory and where there is no clear evidence that a
37 transfer would be adverse to the best interest of the
38 department. If a supervisor is not approved for transfer,
39 he or she shall be informed in writing of the specific
40 reasons for the denial. Denial shall be for some specific

1 reason and cannot be based solely on uncorroborated
2 information from an anonymous source.

3 (d) If the state chooses to fill vacant positions by
4 transfer, but has specified the need to fill positions based
5 on special skills, abilities, or aptitudes, subdivision (c)
6 shall not apply.

7 3511.8. A supervisor who obtains a requested transfer
8 pursuant to Section 3511.7 shall not be eligible to utilize
9 that section again for a period of one year from the
10 effective date of the transfer unless the supervisor has
11 demonstrated a hardship that did not exist at the time of
12 the initial transfer.

13 3511.9. The transfer procedure set forth in Section
14 3511.7 may be superseded in favor of a supervisor
15 requesting a transfer based on a bona fide hardship. If the
16 matter is contested, the appointing power or designee
17 shall explain the basis for the waiving of this section to the
18 appropriate California Correctional Peace Officers
19 Association supervisory representative.

20 3511.10. For a supervisor, letters of instruction shall be
21 considered an instructional tool only. Letters of
22 instruction shall not have an adverse effect on a
23 supervisor's wages, hours, or other terms and conditions
24 of employment.

25 3511.11. Promotions for the supervisory classes
26 described in Section 3511.1 shall be by rule of three
27 persons.

28 3511.12. Supervisors shall be furnished computer
29 equipment at an appropriate work station to perform
30 daily supervisory duties. The state shall provide official
31 business time for computer training to all supervisory
32 employees before the completion of their probationary
33 period.

34 3511.13. Daily vacancies among the supervisory
35 classes described in Section 3511.1 shall be filled by in
36 grade supervisors first, and promotional list eligibles
37 secondly. A voluntary list may be established for
38 additional use. Voluntary participants on a promotional
39 list shall meet minimum qualifications, be off probation



1 or apprenticeship training, and be at the top step of the
2 pay scale for their classification.

3 3511.14. An employee in the supervisory classification
4 shall be compensated for any out of class (rank)
5 assignment in daily increments.

6 3511.15. Promotional examinations for supervisors
7 shall be administered by an independent testing agency
8 not affiliated with the affected department or agency.

9 3511.16. Supervisors shall participate in a joint
10 grievance committee to be established at various
11 institutions and parole regions. The committee shall
12 consist of a minimum of two appointments by the
13 leadership of the California Correctional Peace Officers
14 Association and two by management. The committee
15 may be increased as long as both the association and
16 management sides receive an equal number of positions
17 for appointment. Additionally, there shall be one
18 appointment of a member of the public who is not
19 affiliated with any state entity listed in Section 3511.1,
20 which appointment shall be made jointly by the
21 California Correctional Peace Officers Association and
22 management representatives to the committee. The
23 committee shall have the authority to adjudicate the
24 grievances between the warden or superintendent
25 parole administrator and the respective department
26 director or appropriate authority of the agency or board
27 by majority vote of the committee.

28 3511.17. The state shall provide for administrative
29 leave on an annual basis for one supervisor who is duly
30 elected or appointed by the employee association for the
31 supervisory classifications as described in Section 3511.1
32 that has a membership totaling over 50 percent as
33 reported by the Controller's office.

34 3511.18. A supervisor shall be considered on jury duty
35 when attending verified court appearances on personal
36 matters as long as appropriate documentation and
37 notification is supplied to the employer. This time shall be
38 charged to employees' earned leave credits.

39 SEC. 5. Section 22824 is added to the Government
40 Code, to read:

1 22824. (a) Except as provided in this section and
2 notwithstanding any other provision of law, including the
3 provisions of this part and Divisions 4 (commencing with
4 Section 3200), 4.5 (commencing with Section 6100), and
5 4.7 (commencing with Section 6200) of the Labor Code,
6 any memorandum of understanding reached pursuant to
7 Section 3517.5 between the Governor and the exclusive
8 bargaining agent for State Bargaining Unit 6 that has
9 been approved by the Legislature may provide for one
10 health benefits plan in which all classes contained in State
11 Bargaining Unit 6 and all supervisors in correctional
12 peace officer classes, as defined by Section 830.5 of the
13 Penal Code, *and family members and annuitants*, shall
14 participate. The health benefits plan may include the
15 furnishing of or payment for health benefits through one
16 or more provider or funding arrangements, as described
17 in Section 22791, and shall be administered by a trust fund
18 sponsored by the exclusive bargaining agent for State
19 Bargaining Unit 6. A health benefits plan may be
20 implemented in all or in one or more geographic locations
21 and all members of State Bargaining Unit 6 and all
22 qualifying supervisors employed in a geographical
23 location in which such a plan is implemented shall
24 participate in the plan.

25 (b) A health benefits plan as described in subdivision
26 (a) shall provide for medical, surgical, and hospital
27 treatment for occupational and nonoccupational injuries
28 and illnesses incurred by its participants and shall provide
29 all occupational-related medical treatment coverage
30 required by Division 4 (commencing with Section 3200)
31 of the Labor Code without any payment by the employee
32 of deductibles, copayments, or any share of the premium
33 therefor, and shall include health coverage for the
34 treatment of nonindustrial illnesses and injuries for
35 dependents, pursuant to this part and regulations
36 adopted pursuant to this part.

37 (c) Notwithstanding Sections 4600 and 4601 of the
38 Labor Code, or any provision of Article 2 (commencing
39 with Section 3350) of Chapter 2 of Part 1 of Division 4 of
40 the Labor Code, a participant in a health benefits plan

1 described in subdivision (a) shall not have the option of
2 predesignating a personal physician, other than a
3 physician provided by the health benefits plan, as his or
4 her personal physician, nor shall a participant have the
5 option, pursuant to Section 4601 of the Labor Code, of
6 changing to a physician other than a physician provided
7 by the health benefits plan pursuant to the rules of the
8 plan. However, this section shall not be construed to limit
9 the requirement under Section 4600 of the Labor Code
10 that the employer provide treatment reasonably
11 required to cure or relieve the effects of an injury.

12 ~~(d) Notwithstanding any other provision of law to the~~
13 ~~contrary, the plan described in subdivision (a) may~~
14 ~~contract with any third-party administrator or insurer for~~
15 ~~the underwriting, adjustment, and disposition of~~
16 ~~industrial or nonindustrial claims.~~

17 ~~(e)~~

18 (d) Nothing in this section or in any memorandum of
19 understanding described in subdivision (a) shall transfer
20 any obligation of an employer or the liability for any
21 entitlement under Divisions 4 (commencing with
22 Section 3200), 4.5 (commencing with Section 6100), or 4.7
23 (commencing with Section 6200) of the Labor Code, or
24 under any other provision of law regarding a worker's
25 entitlement to compensation for occupational injuries or
26 illnesses, to any person or entity other than an insurance
27 carrier approved by the health benefits plan.

28 ~~(f) Any third-party administrator for the adjustment~~
29 ~~and disposition of claims for the employer of the~~
30 ~~employees in State Bargaining Unit 6, which provides or~~
31 ~~has provided coverage or administration for occupational~~
32 ~~injuries and illnesses,~~

33 (e) *The State Compensation Insurance Fund and the*
34 *health service providers* shall provide the Department of
35 Personnel Administration and the exclusive bargaining
36 agent for State Bargaining Unit 6, in a format agreeable
37 to them, the information as is necessary to ~~secure a bid~~
38 ~~from a carrier that has been requested to provide a~~
39 ~~proposal~~ *analyze the 24-hour care approach* for coverage
40 for occupational and nonoccupational injuries and

1 illnesses within 60 days of a request to do so. *That time*
2 *may be extended by mutual agreement of all of the*
3 *concerned parties.*

4 ~~(g)–~~

5 (f) A memorandum of understanding described in
6 subdivision (a) shall include a method whereby
7 employees will be informed of their rights and options
8 under the occupational injury and illness portion of the
9 health benefits plan, including the decision of the
10 Workers' Compensation Appeals Board in the case of
11 disputes over compensation for injuries compensable
12 under Division 4 (commencing with Section 3200) of the
13 Labor Code. The memorandum of understanding shall
14 require that a joint labor management safety committee
15 be established and shall describe a process available to
16 employees covered thereby to resolve voluntarily issues
17 subject to the jurisdiction of the Workers' Compensation
18 Appeals Board, including the following:

19 (1) An alternative dispute resolution system
20 governing disputes between employees and employers or
21 their insurers that supplements or replaces all or part of
22 those dispute resolution processes contained in Division
23 4 (commencing with Section 3200) of the Labor Code,
24 including, but not limited to, mediation and arbitration.
25 Dispute resolution by arbitration shall provide that the
26 decision of the arbitrator or board of arbitration is subject
27 to review by the Workers' Compensation Appeals Board
28 in the same manner as provided for reconsideration of a
29 final order, decision, or award made and filed by a
30 workers' compensation judge pursuant to the procedures
31 set forth in Article 1 (commencing with Section 5900) of
32 Chapter 7 of Part 4 of Division 4 of the Labor Code, and
33 the Court of Appeal pursuant to the procedures set forth
34 in Article 2 (commencing with Section 5950) of that
35 chapter governing orders, decisions, or awards of the
36 appeals board. The findings of fact, award, order, or
37 decision of the arbitrator shall have the same force and
38 effect as an award, order, or decision of a workers'
39 compensation judge. Any provision for arbitration
40 established pursuant to this section shall not be subject to

1 Section 5270, 5270.5, 5271, 5272, 5273, 5275, 5276, or 5277
2 of the Labor Code.

3 (2) The use of an agreed list of providers of medical
4 treatment that may be the exclusive source of all medical
5 treatment provided under Division 4 (commencing with
6 Section 3200) of the Labor Code.

7 (3) If the dispute resolution procedures provided by
8 the health benefits plan include the use of qualified
9 medical evaluators or agreed medical evaluators, it shall
10 utilize an agreed, limited list of qualified medical
11 evaluators and agreed medical evaluators that will
12 include treating physicians and treating specialists and
13 that may be the exclusive source of qualified medical
14 evaluators and agreed medical evaluators under that
15 division. If a claim is submitted to an arbitrator pursuant
16 to this section, the arbitrator may, at the request of any
17 party or of the Public Employees' Retirement System,
18 order a second medical-legal evaluation by a qualified
19 medical evaluator or agreed medical evaluator, to be paid
20 for by the employer.

21 (4) A light-duty, modified job or return-to-work
22 program.

23 (5) A vocational rehabilitation or retraining program
24 utilizing an agreed list of providers of rehabilitation
25 services that may be the exclusive source of providers of
26 rehabilitation services under Division 4 (commencing
27 with Section 3200) of the Labor Code.

28 ~~(h)~~

29 (g) Nothing in this section shall permit a
30 memorandum of understanding to diminish the
31 entitlement of an employee to compensation payments
32 for total or partial disability, temporary disability,
33 vocational rehabilitation, or medical treatment fully paid
34 by the employer as otherwise provided in Division 4
35 (commencing with Section 3200) or Division 4.5
36 (commencing with Section 6100) of the Labor Code. The
37 portion of any agreement that violates this subdivision
38 shall be declared null and void.

39 ~~(i)~~

1 (h) A determination by a qualified medical evaluator,
2 an agreed medical evaluator, or an arbitrator, whichever
3 is the final decisionmaker, pursuant to a dispute
4 resolution process as described in subdivision ~~(g)~~ (f), that
5 a participant is a qualified injured worker as that term is
6 used in Division 4 (commencing with Section 3200) of the
7 Labor Code shall be binding on the Public Employees'
8 Retirement System on the issue of whether the
9 participant is incapacitated for the performance of his or
10 her duties, notwithstanding Section 21156. Nothing in this
11 section shall preclude the Board of Administration of the
12 Public Employees' Retirement System from monitoring
13 and evaluating the status of a person retired pursuant to
14 Section 21192.

15 ~~(j)~~

16 (i) Upon termination of a memorandum of
17 understanding described in subdivision (a), the health
18 benefits plan shall continue and there shall be no
19 diminution of employer contribution until a new
20 memorandum of understanding is negotiated between
21 the parties.

22 ~~(k)~~

23 (j) Any health benefits plan previously approved by
24 the Board of Administration of the Public Employees'
25 Retirement System pursuant to subdivision (c) of Section
26 22790, that is modified by a memorandum of
27 understanding as described in this section, shall ~~continue~~
28 ~~to be approved by~~ *be submitted to* the Board of
29 Administration of the Public Employees' Retirement
30 System ~~regardless of the modification~~ *for review and*
31 *approval. Upon approval, that health benefits plan shall*
32 *continue in effect, unless subsequently modified by a*
33 *memorandum of understanding that necessitates*
34 *resubmission to the board for review and approval.* Any
35 reserves and interest thereon that have accrued based
36 upon the experience of the plan or a predecessor plan,
37 including those which have accrued pursuant to
38 paragraph (9) of subdivision (a) of Section 599.508 of
39 Title 2 of the California Code of Regulations, shall be
40 available to and utilized by the plan as so modified.



~~(f)~~

(k) Notwithstanding any other provision in this section, a participant who chooses to reside out of state may, pursuant to Section 22862.1, enroll in any health maintenance organization or fee-for-service plan doing *shall continue to be enrolled in the health benefit plan provided by the memorandum of understanding* doing business in other states and contracting with the Board of Administration of the Public Employees' Retirement System pursuant to Section 22862.1 or any other applicable section of this part. Such a person shall be subject to the workers' compensation system as described in Divisions 4 (commencing with Section 3200), 4.5 (commencing with Section 6100), and 4.7 (commencing with Section 6200) of the Labor Code and not by the dispute resolution system for occupational illness or injury which is part of the health benefits plan provided for by the memorandum of understanding, as described in this section.

~~(m)~~

(l) If any other provision of this part or any regulation adopted pursuant thereto, or any provision of Divisions 4 (commencing with Section 3200), 4.5 (commencing with Section 6100), or 4.7 (commencing with Section 6200) of the Labor Code or any regulation adopted pursuant thereto, is in conflict with this section or with the provisions of a memorandum of understanding as described in subdivision (a), the memorandum of understanding or this section shall be controlling without further legislative action, except that those provisions of a memorandum of understanding that require the expenditure of funds shall not become effective unless approved by the Legislature in the annual Budget Act.

~~(n)~~

(m) If any provision of this section or the application thereof to any person or circumstances is held invalid, that invalidity shall not affect other provisions or applications of the section which can be given effect

- 1 without the invalid provision or application and to this
- 2 end the provisions of this section are severable.

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